

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES SHIVE,

Plaintiff,

vs.

No. CIV 15-406 JB/WPL

AMAZON.COM INC.; EBAY, INC.;
JOHN LAVECCHIA; J&C BASEBALL
CLUBHOUSE, INC.; SEARS HOLDING
CORPORATION; UNBEATABLE
SALE.COM, INC. and WAL-MART STORES,
INC.,

Defendants.

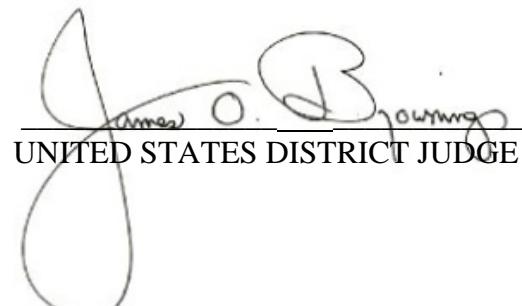
**MEMORANDUM OPINION AND ORDER DENYING MOTION FOR DEFAULT
JUDGMENT AND SETTING ASIDE DEFAULT**

THIS MATTER comes before the Court on the Plaintiff's Motion for Default Judgment Against Defendant J&C Baseball Clubhouse, Inc., filed February 23, 2017 (Doc. 71). The Clerk of the Court entered default against J&C Baseball on August 8, 2016, see Clerk's Entry of Default, filed August 8, 2016 (Doc. 60), approximately three months after the Court allowed Plaintiff James Shive to reinstate J&C Baseball as a Defendant, see Order Granting Motion to Reinstate Defendant, filed May 19, 2016 (Doc. 58) ("Order of Reinstatement"). However, on August 23, 2016, after J&C Baseball was reinstated as a Defendant, the Honorable William P. Lynch, United States Magistrate Judge for the United States District Court for the District of New Mexico, ordered Shive to re-serve J&C Baseball with (i) the Summons; (ii) the Verified Complaint for Copyright Infringement, filed May 12, 2015 (Doc. 1); (iii) the Order of Reinstatement; and (iv) several additional filings. See Order, filed August 23, 2016 (Doc. 61). This process took approximately six months. See Motion for Extension of Time, filed December

1, 2016 (Doc. 66); Order Granting Plaintiff's Motion for Extension of Time, filed December 7, 2016 (Doc. 67); Motion for Extension of Time, filed January 9, 2017 (Doc. 68); Order Granting Plaintiff's Motion for Extension of Time, filed January 13, 2017 (Doc. 69); Proof of Service, filed February 16, 2017 (Doc. 70).

Shive now moves for default judgment pursuant to rule 55 of the Federal Rules of Civil Procedure. The case's procedural history makes entry of default judgment against J&C Baseball inappropriate. Attaining default judgment is a two-step process: the Clerk must enter default, and then the plaintiff must move for default judgment. In this case, the Clerk's entry of default was premature. It is unclear that J&C Baseball was served with the Order of Reinstatement on August 8, 2016. Accordingly, the Court exercises its considerable discretion in the area of default to set aside the Clerk's entry of default. Now that it is clear that J&C Baseball has been appropriately served, Shive may reapply for a Clerk's entry of default and may refile his Motion for Default Judgment under rule 55.

IT IS ORDERED that (i) the Plaintiff's Motion for Default Judgment Against Defendant J&C Baseball Clubhouse, Inc., filed February 23, 2017 (Doc. 71), is denied; and (ii) the Clerk's Entry of Default, filed August 8, 2016 (Doc. 60), is set aside.



James O. Bowne
UNITED STATES DISTRICT JUDGE

Parties and counsel:

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